IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 9038 of 2007(A)

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PETITIONER:

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1. P.P.SAJEEVAN, S/O PARAMESWARAN,
   PUTHENPURACKAL HOUSE, CHEPPUKULAM P.O.,
   KARIMANNOOR, THODUPUZHA, WORKING AS
   HEALTH INSPECTOR, PRIMARY HEALTH CENTRE,
   ELAMDESAM.

2. M.M.SONY, S/O MICHAL,
   MUNDACKAL, MUTHALAKODOM P.O., THODUPUZHA,
   WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
   ARAKULAM.

3. JOHNSON, MATHEW, S/O OUSEPH MATHAI,
   PLAKKUTTATHIL HOUSE, THEKKUMBHAGOM P.O.,
   THODUPUZHA, WORKING AS HEALTH INSPECTOR,
   THQ HOSPITAL, THODUPUZHA.

4. JOSE AUGUSTINE, S/O AUGUSTINE,
   THIRUTHALIL HOUSE, VELLIAMATTOM P.O.,THODUPUZHA,
   WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
   MUTTOM.

5. S.SANTHOSH, S/O V.K.SREEDHARAN,
   CHELASSERIL HOUSE, ARIKKAZHA P.O., THODUPUZHA,
   WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
   PERUVANTHANAM.

6. C.J.KURIACHAN, CHAKKUMKUDIYIL HOUSE,
   12TH MILE, VALARA P.O.,
   WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
   CHITHIRAPURAM.

7. K.J.SEBASTIAN, KALLOOR HOUSE,
   200 ACRE, ADIMALI P.O.,
   WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
   BISONVALLY.

8. M.K.MUHAMMED, KUNJACKAL HOUSE,
   IRUMBUPALAM, VALARA P.O., IDUKKI,
   WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
   DEVIYAR COLONY.

9. P.M.MUHAMMED, PARAMBIL HOUSE,
VALARA P.O., IDUKKI,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
KUTTAMPUZHA.

10. K.A.MATHEW, KOLLITHADATHIL HOUSE,
RAMACKAL METTU P.O., IDUKKI,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
KATTAPPANA.

11. K.M.SABUKUTTY, KUNNEL HOUSE,
ANAKKARA P.O., IDUKKI,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
VANDANMEDU.

12. K.P.JAYAKUMAR, KULATHINKAL HOUSE,
PAINAVU P.O., IDUKKI,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
CHAKKUPPALLOM.

13. V.SABU, BLOCK NO.421,
K.P.COLONY, IDUKKI,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
K.P.COLONY.

14. V.C.KOPSHY, VEZHAKOMBIL HOUSE,
KATTAPPANA P.O., IDUKKI,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
CHEMPAKAPARA.

15. K.T.SREEDHARAN, BLOCK NO.845,
SANYASIODA P.O., K.P.COLONY, IDUKKI,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
KUMILY.

16. GEORGE KUTTY SEBASTIAN, THOTTAPPILLI
HOUSE, KOCHARA P.O., CHETTUKUZHY,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
KUMILY.

17. K.N.RADHAKRISHNAN, MANGALATH HOUSE,
DEVIYAR COLONY, VALARA P.O.,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
VATTIYAR.

18. SOMY JOHN, THOTTATHIMALIL HOUSE,
THOMMANKUTHU P.O., THODUPUZHA.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
DEVIKULAM.

19. KENNY VARGHESE, KANNAMKERIYIL HOUSE,
PAINAVU P.O.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
KANJIKUZHY.

20. JOHNY JOSEPH,
PIRAYARI P.O., PALAKKADU.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
KANNADI.

21. E.V.ABRAHAM, ELAYIDATHU HOUSE,
MANIMARUMCHAL, NERIYAMANGALAM.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
NERIYAMANGALAM.

22. P.M.FRANCIS, PANTHANANICKAL,
PANDIPPARA P.O., IDUKKI.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
CHINNAKKANAL.

23. MOHAMMED BASHEER.K, KURUVAMPADOM HOUSE,
UMMANAZHI, PULAPPATA, PALAKKAD.
WORKING AS HEALTH INSPECTOR, P.H.C.SHOLAYOOR,
ALLAPPADY, PALAKKAD.

24. P.M.HOHANDAS, I.P.HOUSE,
MELUR P.O., OTTAPPALAMK,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
VAVANDARAPPILLI.

25. MOHAMMED BASHEER.K,
ALLAPPADY, PALAKKAD,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
SHOLAYOOR.

26. K.ARU, ATHIRA NIVAS, PULUNNIRAKKODE,
PERUVEMBA P.O., PALAKKAD.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
KOLLANGODE.

27. P.MOHAMMEDALI, S/O VEERAN, PARAYIL HOUSE
ARIYOOR P.O., MANNARAKKAD, PALAKKAD.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
ADAKKAPUTHUR.

28. T.MADHAVAN, S.O AYYAPPAN, THEKKEPAT
HOUSE, 'MIDHUNAM', KOOTTANAD P.O.,
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
TRICHUR.

29. P.V.SUNDARAN, S/O VELAYUDHAN,
ENNAPADAM, ELAPPULLY P.O., PALAKKAD.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
KONDAZHY.

30. UNNIKRISHNAN M.A., S/O AYYAPPAN,
MANDAKATH HOUSE, THEKKEPOTTA P.O.,PUTHUCODE,
PALGHAT.WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH
CENTRE, VANIAMPARA.

31. SUBRAMANIAN T.S., S/O T.SUBRAMANIAN,
THAZHAYAMKOTTATHUMANA,
SRIKRISHNAPURAM P.O., PALAKKAD.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
TRICHUR.

32. A.M.ABDUL JABBAR, S/O MOITHEEN,
ERENTHURUTHIL HOUSE, VARAPPETTY POST,
KOTHAMANGALAM, ERNAKULAM, WORKING AS HEALTH
INSPECTOR, C.H.C., MALIPURAM, ERNAKULAM.

33. M.HAJAHUSSAIN, S/O ABDUL KHAN RAWTHER,
IV/14, HOSPITAL ROAD,
KOZHINJAMPARA P.O., PALAKKAD.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
PALAKKAD.

34. V.M.RAVINDRANATH, S/O NARAYANANKUTTY
NAIR, "SREYAS", ARUVANNURPARAMBU,
VATTEKKAD P.O., KOLLENGODE.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
KODUVAYOOR, PALAKKAD.

35. YAKOOB.A, S/O LATE ABOOBAKER RAWTHER,
LOVELY GARDEN, CHIRAKKAD,
KUNNATHUR MEDU P.O., PALAKAD.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
THENKURUSSI.

36. VIJAYAN M.K., S/O M.K.KESAVAN,
MELE HOUSE, CHEMBRAKULAM,
KOTTAI P.O., PALAKKAD.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
PERINGOTTUKURUSSI, PALAKKAD.

37. SOMAN.K, S/O M.K.KESAVAN,
MELE HOUSE, KOTTAYI P.O., PALAKKAD.
WORKING AS HEALTH INSPECTOR,PRIMARY HEALTH CENTRE,
PARALI, PALAKKAD.

38. JAFFAR ALI, S/O ABDUL JABBAR,
PARAKKALAM ROAD, KOZHINJAMPARA POST, PALAKKAD,
WORKING AS HEALTH INSPECTOR, C.H.C.ALAPPULLY,
PALAKKAD.

BY ADV. SRI.P.GOPINATH

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY, HEALTH & FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR OF HEALTH SERVICES
OFFICE OF THE D.H.S., TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.K.DENESAN, J**

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**W.P.(C)NO. 9038 of 2007**

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**Dated this the 19th day of March, 2007**

**JUDGMENT**

The petitioners, 38 in number, have filed this writ petition for the issuance of a writ of certiorari quashing Ext.P3 G.O. dated 22.12.2005 by which the request of the petitioners to invoke the residuary power under Rule 39 of KS&SSR vested in the Government has been rejected.

2. The circumstances under which the Government will be justified in exercising the power under Rule 39 of KS&SSR have come up for consideration in the past, before this court. The authoritative pronouncement on the subject is the Full Bench decision in **Sreedharan v State of Kerala** (1973 KLT 151).

3. There is no vested right in any government employee to say that the Government is bound to grant

reliefs under Rule 39 of KS&SSR. The above rule opens with the words notwithstanding anything contained in KS&SSR or in any other rules. Power is conferred on the Government to grant reliefs to those who, in the opinion of the Government, deserve a just and equitable treatment even in supersession of all other rules and bypassing the procedure prescribed in other rules. It is not, as though, the Government can exercise the residuary power arbitrarily and without regard to facts, circumstances and judicial pronouncements. Public interest, exigencies of service, rights of third parties etc. are matters for the Government to take into consideration before granting reliefs to parties who invoke Rule 39 of KS&SSR, because, the result of that order shall not lead to another miscarriage of justice or the annihilation of the just and legitimate rights of others or contrary to the constitutional scheme as explained by the apex court in **Secretary, State of Karnataka vs. Umadevi ((1996)4 SCC 1).**

4. The petitioners sought for orders to treat the provisional service rendered by them as regular service from

the date of their initial entry, notwithstanding that their regular service commenced only after 1.10.1994. In **Shobhana v State of Kerala** (2004(3) KLT 131), a learned judge of this Court took the view that even if the date of regular appointment of a member of the service falls on or after 1.10.1994, the benefit of the Government decision No.2 below Rule 33 of Part I KSR can be extended to them also. The State Government filed writ appeal against the above judgment. A Division Bench of this Court did not agree with the statement of law in Sobhanas's case (supra). However, the Bench held that even if the order of appointment was issued after 1.10.1994, in cases where the date of effective advice by PSC is prior to 1.10.1994, the benefit of the Government Decision No.2 below Rule 33 of Part I KSR can be granted to employees who were thus advised. Subsequently, another Division Bench held that the ratio of the decision of the earlier Division Bench, as stated above, called for reconsideration. The matter was considered elaborately by a Full Bench of this Court in **State of Kerala v Ponnamma.** The Full Bench took the view that the provisional

service rendered prior to 1994 can be reckoned for the limited purpose of granting increment, only if the date of the regular appointment is prior to 1.10.1994. The respondents in the case decided by the Full Bench, filed a Review Petition. The prayer made by the review petitioners was that, having regard to the special circumstances, the Government may be directed to look into their grievance and pass orders in exercise of the power under rule 39 of KS&SSR. The Full Bench considered that request and disposed of the Review Petition saying that there was no need to issue the direction as prayed for.

5. As per Ext.P2 judgment, the Government was directed to look into the grievance of the petitioners and examine whether the power under Rule 39 of KS&SSR can be invoked. Government considered the question and as per Ext.P3 impugned order, took the view that the case of the petitioners does not deserve to be dealt with favourably under Rule 39 of KS&SSR. It is this order, as already noticed, is under challenge in this writ petition.

6. Counsel for the petitioners submits that the Government have not considered the matter as directed by the Division Bench in Ext.P2 judgment. He also submits that there are cases where persons similarly situated have been granted reliefs.

7. Heard both sides. When Ext.P2 judgment was passed, the Division Bench did not have the benefit of the order passed by the Full Bench in the Review Petition. That apart, whatever has been stated by the Division Bench in Ext.P2 judgment cannot be treated as findings entered by the Bench, so that the Government is bound to allow the request of the petitioners. The Division Bench did not say that the Government shall pass orders favourable to the petitioners who invoked Rule 39 of KS&SSR. The learned Judges of the Division Bench expressed the view that it was a fit case to examine whether the power under Rule 39 of KS&SSR can be exercised. That aspect has been, accordingly, examined by the Government. It is trite that whether the power under Rule 39 of KS&SSR need be exercised in the given facts and

circumstances is essentially a matter of discretion vested in the Government. This Court will not find fault with the Government for not granting reliefs to the parties, merely on the ground that this Court had directed the Government to consider the possibility of exercising Rule 39 of KS&SSR. Hence I am of the view that Ext.P3 is not liable to be interfered with on that ground.

8. Coming to the second contention urged by the counsel for the petitioner that there are cases where the Government itself had regularised the services of similarly situated persons from retrospective dates, I need only say that those are cases where the Government had to pass orders as per the directions of the apex Court issued from time to time in the case of those who had approached the Supreme Court. But subsequently, the Honourable Supreme Court has reconsidered the principle of law, as per which orders and judgments leading to directions as mentioned above were issued. In **Secretary, State of Karnataka v Umadevi** (2006(4) SCC 1) the apex court has categorically held that the Courts will not, as a

matter of course, issue directions to the concerned authorities to regularise the services of provisional hands or regularise the provisional service of the employees contrary to Rules. In the last but one paragraph of the above judgment, the Constitutional Bench has further held that all decisions which run contrary to the constitutional scheme explained in that decision, shall stand denuded of its legal efficacy.

9. In the light of the principle of law laid down by the Constitutional Bench and the view expressed by the Full Bench of this Court in the Review Petition referred to above, I hold that the petitioners are not entitled to any reliefs. The writ petition, is therefore, dismissed.

K.K.DENESAN, JUDGE

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